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August 27, 2009

VIA EXPRESS MAIL

Judge Blanche M. Manning
Northern District Court of Illinois
219 S. Dearborn St., Room 2132
Chicago, IL 60604

Re: *Bires v. Waltom, LLC and TD Racing Development, LLC*
Case No. 08 CV 4680.
Notice of Supplemental Authority

Dear Judge Manning:

I am enclosing copies of the briefing on the summary judgment motion decided in *New Medico Associates, Inc. v. Kleinhenz*, No. 90 C 6782, 1991 WL 105600 (N.D. Ill. May 31, 1991), a case cited on the second page of Plaintiff's Response to Defendants' Motion for Summary Judgment for its holding on summary judgment that certain employment contract provisions were unenforceable because the employees had quit their prior jobs in reliance on future employment and had already begun that employment when they were presented with the contracts. I apologize for not submitting this authority contemporaneously with Plaintiff's Response. We needed to retrieve the briefing from the National Archives, which took longer than expected.

We believe that this briefing offers additional insight about the issues and facts considered by the court in reaching its decision in *New Medico*. Because the *New Medico* briefing also addressed various issues unrelated to the dispute in the case at hand, we specifically direct the Court's attention to the following passages:

1. Within document 22 (Defendants' Motion for Summary Judgment and Supporting Documents):
 - a. Defendants' Memorandum: Statement of Facts at Pages 2-5
 - b. Defendants' Statement of Undisputed Material Facts at Paragraphs 3-8
2. Within document 23 (Appendix to Defendant's [sic] Motion for Summary Judgment):
 - a. Affidavit of Thomas Kleinhenz at Paragraphs 5-7
 - b. Affidavit of Nicholas Papp at Paragraphs 3-9



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3. Within document 24 (Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment and Supporting Documents):
 - a. Plaintiff's Response to Defendants' Rule 12 Statement of Undisputed Material Facts at Paragraphs 5, 8
 - b. Affidavit of Randi Kashnig at Paragraph 5

The reply brief in support of the Defendants' Motion for Summary Judgment was filed under seal, and therefore, we were not able to obtain it. We hypothesize that this is why the briefing that we obtained does not contain extensive legal argument related to the court's ultimate holding. However, the briefing does identify the facts that were before the court in ruling on the summary judgment motion.

We are also submitting to the Court briefing on a motion for reconsideration of the *New Medico* decision (documents 36 and 40). These documents lay out many of the factual and legal issues related to the ultimate holding and are relevant to the case at hand in their entirety. Thank you for your consideration of this authority.

Best regards,

Debra J. Tucker

Encl.

Cc: Mr. Faustin A. Pipal (via e-mail)
Mr. Dennis A. Berg (via e-mail)